

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KRISTOPHER CHAMBERS,

Plaintiff,

- against-

COUNTY OF NASSAU, NASSAU COUNTY
POLICE DEPARTMENT;
Police Officer MICHAEL SCHMIDT;
Police Officer OMAR GALAN;
Police Officer JOSEPH GIACONE;
Police Officer MIKE KAMPERVEEN; and
POLICE OFFICERS JANE AND JOHN “DOES”
individually and in their official capacities
(said names being fictitious and meaning to
represent police officers whose names and
true identities are currently unknown to Plaintiff),

Defendants.

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FEUERSTEIN, District Judge:

Before the Court is a Report and Recommendation (hereafter, “Report”) of the Honorable Anne Y. Shields, United States Magistrate, dated January 28, 2020: (1) recommending that Defendants’ motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (hereafter, the “Dismissal Motion”) be granted in part and denied in part; and, (2) advising, *inter alia*, (a) that “[a]ny written objections to th[e] Report . . . must be filed with the Clerk of the Court within fourteen (14) days of filing of th[e R]eport”, and (b) that a “[f]ailure to file objections within fourteen (14) days will preclude further review of th[e R]eport . . . either by the District Court or Court of Appeals.” Report at 10-11 (citing 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(A), 72(b); *Thomas v. Arn*, 474 U.S. 140, 145 (1985); *Cidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008)).

Case No.: 19-cv-0158 (SJF)(AYS)
ORDER ADOPTING
REPORT &
RECOMMENDATION FILED
CLERK

2/19/2020 12:01 pm

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

A copy of the Report was served upon counsel for all parties via ECF on January 28, 2020. (*See* Notice of Electronic Filing *associated with* ECF No. 30.) Despite such service, no objections have been filed, nor did any party seek an extension to do so. (*See* Case Docket, *in universum*.) For the reasons set forth below, Magistrate Judge Shields' Report is adopted in its entirety.

I. DISCUSSION

A. *Standard of Review*

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3). However, the Court is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas*, 474 U.S. at 150. Indeed, “[w]here parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)).

Nonetheless, the waiver rule is “nonjurisdictional” and, thus, the Court may excuse a violation thereof “in the interests of justice.” *King v. City of N.Y., Dep’t of Corr.*, 419 F. App’x 25, 27 (2d Cir. 2011) (summary order) (quoting *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993)); *see also DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000). “Such discretion is exercised based on, among other factors, whether the defaulted argument has substantial merit or, put otherwise, whether the magistrate judge committed plain error in ruling against the defaulting

party.” *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); *accord King*, 419 F. App’x at 27.

To accept the magistrate judge’s report and recommendation absent a timely objection, the court need only be satisfied that there is no clear error on the face of the record. *See FED. R. CIV. P. 72(b); Baptichon v. Nevada State Bank*, 304 F. Supp.2d 451, 453 (E.D.N.Y. 2004), *aff’d*, 125 F. App’x 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge’s findings or recommendations. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

B. Review of the Report

No party has filed objections to the Report within the time prescribed in 28 U.S.C. § 636(b)(1)(C), nor has any party sought an extension of the deadline. As the parties were provided with adequate notice of the Report and an express warning of the consequences of a failure to timely file objections thereto, their failure to interpose timely objections to the Report operates as a waiver of further judicial review. *See Caidor*, 517 F.3d at 602-03; *Mario*, 313 F.3d at 766. Thus, this Court is not obligated to conduct a *de novo* review of the findings and conclusions in the Report, but rather “need only satisfy itself that there is no clear error on the face of the record to accept a magistrate judge’s report and recommendation.” *Safety-Kleen Sys., Inc. v. Silogram Lubricants Corp.*, No. 12-cv-4849, 2013 WL 6795963, at *1 (E.D.N.Y. Dec. 23, 2013).

After a careful review of the Report, the Court finds no plain error in either Magistrate Judge Shields’ reasoning or the conclusions she reached therein. Hence, the Court adopts the Report in its entirety.

II. CONCLUSION

Accordingly:

A. The Defendants' Dismissal Motion is *granted in part* and *denied in part*, with

Plaintiff's:

- (1.) First Cause of Action, alleging a claim of malicious prosecution,
REMAINING;
- (2.) Second Cause of Action, alleging a claim of deprivation of due process,
being DISMISSED; and
- (3.) Third Cause of Action, alleging a claim of municipal liability, being
DISMISSED; and

B. The March 18, 2020 Status Conference scheduled before the undersigned shall proceed as scheduled, *i.e.*, at 11:15 a.m., in Courtroom 1010 of the Central Islip Federal Courthouse.

SO ORDERED this 19th day of February 2020 at Central Islip, New York.

/s/ *Sandra J. Feuerstein*
Sandra J. Feuerstein
United States District Judge